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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 MARK McLEAN SAUNDERS,) Civil No. 09cv708 L (WMc)
12)
13 Petitioner,)
14 v.) **ORDER GRANTING MOTION FOR**
15 V.M. ALMAGER,) **RECONSIDERATION [doc. #26];**
16 Respondent.) **DENYING AS MOOT REQUEST**
) **FOR ENLARGEMENT OF TIME TO**
) **FILE OBJECTIONS TO THE**
) **REPORT [doc. #24]; and**
) **REFERRING MATTER TO THE**
) **MAGISTRATE JUDGE**

17 On September 16, 2010, the magistrate judge filed a Report and Recommendation
18 ("Report") in this action which seeks a writ of habeas corpus. Petitioner moves for
19 reconsideration because of a factual discrepancy in the Report. Specifically, the Report twice
20 states that petitioner did not file a traverse to respondent's answer when in fact petitioner timely
21 filed his traverse on December 16, 2009. (*See* Report at 21 and 25; Traverse [doc. #21].)

22 Civil Local Rule 7.1(i) allows parties to file motions for reconsideration. Under that local
23 rule, a party may apply for reconsideration "[w]henever any motion or any application or
24 petition for any order or other relief has been made to any judge and has been refused in whole
25 or in part. . . ." Civ. L. R. 7.1(i)(1). A party must show "what new or different facts and
26 circumstances are claimed to exist which did not exist, or were not shown, upon such prior
27 application." *Id.* A timely-filed motion for reconsideration under a local rule is considered a
28 motion under Federal Rule of Civil Procedure 59(e). *Schroeder v. McDonald*, 55 F.3d 454, 459

1 (9th Cir. 1995).

2 Reconsideration under Rule 59(e) is appropriate "if the district court (1) is presented with
3 newly discovered evidence, (2) committed clear error or the initial decision was manifestly
4 unjust, or (3) if there is an intervening change in the controlling law." *School Dist. No. 1J,*
5 *Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). A Rule 59(e)
6 motion "should not be granted[] absent highly unusual circumstances." *389 Orange St. Partners*
7 *v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

8 Here, it is clear that the Report suffers from a clear factual error: petitioner timely filed a
9 traverse that should have been considered in the preparation of the Report. Accordingly, **IT IS**

10 **ORDERED:**


11 1. Petitioner's motion for reconsideration is **GRANTED**.

12 2. The magistrate judge shall prepare a Report taking into account the entire record in
13 this case, including petitioner's traverse.

14 3. Petitioner's request for an enlargement of time to file objections to the Report is
15 **DENIED AS MOOT.**

16 **IT IS SO ORDERED.**

17 DATED: October 20, 2010

18 
19 M. James Lorenz
United States District Court Judge

20 COPY TO:

21 HON. WILLIAM McCURINE, JR.
22 UNITED STATES MAGISTRATE JUDGE

23 ALL PARTIES/COUNSEL
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